

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

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WRIT PETITION No.28 of 2007

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Date: 29.01.2007

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Between:

Syed Shah Mohammed Raju Hussaini Sani

....Petitioner

and

Andhra Pradesh State Wakf Board
and another

....Respondents

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O R D E R:

The father of the petitioner was recognized as mutawalli of a wakf known as Dargah Hazrath Syed Shah Raju Qattal Hussaini, Fateh Darwaza, Hyderabad. He is said to have died in the year 1972. There upon, the petitioner approached the Andhra Pradesh State Wakf Board, the first respondent herein, to recognize him as mutawalli. The request of the petitioner was acceded to. He was so recognized in the year 1975. He appointed his son as Naib Mutawalli in the year 2005 and the said appointment was recognized by the first respondent. The petitioner feels aggrieved by the order, dated 07.12.2006, passed by the first respondent, appointing the second respondent as a joint mutawalli.

The petitioner contends that his father alone was recognized as mutawalli of the wakf and that there is neither any factual, nor legal basis for the first respondent to appoint the second respondent as joint mutawalli. He further contends that the impugned order is not traceable to the Wakf Act or the Rules made thereunder and it is liable to be set aside.

Respondents 1 and 2 filed counter-affidavits and

made attempts to sustain the impugned order. Broadly, it is urged that the first respondent is conferred with wide powers to protect the interests of the wakfs and the impugned order was passed to enforce the rights, which have accrued to it, under various proceedings.

Shri A.M.Quereshi, learned counsel for the petitioner, submits that the provision under which the first respondent can appoint a mutawalli to a wakf is Section 63 of the Act and that none of the circumstances referred to therein exist in the present case. He contends that the first respondent violated the principles of natural justice, inasmuch as no notice was issued to the petitioner, before the impugned order was passed.

Shri Abdul Nazeeb Khan, learned Standing Counsel for respondent No.1 and Shri M.A.Bari, learned counsel for respondent No.2, on the other hand, contend that the father of the second respondent was appointed as grantee of the wakf properties along with the father of the petitioner and it was recognized by the Atiyat Court and that no exception can be taken to the impugned order. They contend that the petitioner continues to be a mutawalli and he cannot be said to have suffered any prejudice, on account of appointment of the second respondent.

Arguments were addressed at some length, as to whether there can be more mutawallis than one to a wakf institution. It is true that the Act is silent on this aspect, but if the over all scheme is taken into account, it cannot

be said that there is any prohibition for appointment of more than one mutawalli to a given institution. That question, however, does not become much of relevance, in the instant case.

It is a matter of record that the father of the petitioner alone was mutawalli, recognized by the competent authority, for the wakf. On his death in the year 1972, the petitioner was recognized as the successor. The impugned order does not refer to any specific provision. The only provision under which the Wakf Board can appoint a mutawalli or for that matter, a joint mutawalli, is Section 63 of the Act, which reads as under:

“63. Power to appoint mutawallis in certain cases:

No mutawalli shall spend any money out of the funds of the wakf, of which he is the mutawalli, for meeting any costs, charges, or expenses which are or may be, incurred by him, in relation to any suit, appeal or any other proceeding for, or incidental to, his removal from office or for taking any disciplinary action against himself.”

From a perusal of the same, it is evident that to exercise power under the provision, any of the two circumstances must exist, namely, a) there is a clear vacancy of the mutawalliship and b) there is a dispute as to the competence or eligibility of the existing mutawalli of a wakf. Admittedly, the petitioner is functioning as mutawalli of the wakf and the impugned order does not refer to any dispute as to the eligibility or competence of

the petitioner. Therefore, there was no basis for the first respondent to exercise the power under Section 63 of the Act.

Reference is made to Section 32 of the Act, which confers over all and general powers upon the first respondent. It hardly needs any emphasis that when an enactment contains a specific provision, the same cannot be subdued by a general provision.

Another aspect of the matter is that the second respondent is appointed to share the office as well as the profits to be derived from the Wakf with the petitioner. The result is that the income or rights of the petitioner would be slashed to the half, by virtue of the impugned order. When the petitioner is to suffer from such serious detriment, the minimum expected of the first respondent is to put the petitioner on notice. No such effort was made.

Viewed from any angle, the impugned order cannot be sustained.

The writ petition is accordingly allowed and the impugned order is set aside. It is, however, made clear that it shall be open to the respondents to work out their remedies in accordance with law. There shall be no order as to costs.

L.NARASIMHA REDDY, J

29th JANUARY, 2007.

Note: L.R.copy be marked.

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